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Friedman
P.L. #2

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-190982

DATE: May 9, 1978

MATTER OF: Adrian L. Merton, Inc.

DIGEST:

1. Bid discovered in designated office after time for bid opening will not be considered where there is no direct or documentary evidence to conclusively establish time of its receipt.
2. Bid discovered in designated office after time of bid opening is late in absence of direct or documentary evidence establishing time of receipt at place designated for receipt of bids and independent evidence fails to conclusively show that bid was not late.

Adrian L. Merton, Inc. (Merton), the low bidder at the time of bid opening under Invitation for Bids (IFB) DAKF27-78-B-0011, issued by the U. S. Army (Army), Fort Meade, Maryland, protested the consideration of Pearce-Trawick Contractors' (Pearce) lower bid, discovered after bid opening in the room designated in the IFB for receipt of bids. In its report to our Office, the Army disagrees with the procuring activity and recommends sustaining Merton's protest. Citing our decision in Instrumentation and Mechanical Systems, Inc., B-189739, October 25, 1977, 77-2 CPD 325, the Army states that Pearce's bid may not be considered for award because there is no time/date stamp or other documentary evidence to establish receipt at the Government installation or the DIO Procurement Division, the office designated in the IFB for receipt of bids, before bid opening.

The IFB was issued on November 25, 1977, with a scheduled bid opening time of 2:00 p.m. on December 19, 1977. The IFB provided that:

"Sealed bids * * * will be received until
2:00 PM 19 DEC 77 at

DIO PROCUREMENT DIVISION, BUILDING T-2812
CHISHOLM AVE., BETWEEN 14th and 15th STS
FORT GEORGE G. MEADE, MARYLAND 20755"

The last mail delivery on December 19, 1977, arrived in the Procurement Control Branch of the DIO Procurement Division at approximately 1:15 p.m. The Procurement Control Branch is separated by a 4 foot high counter, to which visitors come for information and swinging gates are located at such positions to prevent unauthorized personnel from entering the area. The subject mail was delivered to the designated office and placed on the table which is used for distribution and is located directly behind a 6 foot partition. The table is several feet from the counter. Normally, incoming mail is checked for bids prior to bid opening and all bids are placed in the envelope reserved for each solicitation. A procurement clerk working in the Procurement Control Branch states:

"At approximately 1315 hours, * * * was told to attend a Safety meeting and this left me alone to handle the business of the Procurement Control Branch * * *.

"I recall that the afternoon mail arrived at its usual hour of approximately 1315 hours. There was no remaining mail from previous deliveries and this mail run was the last of the day. The mail was placed on the table used for its distribution - it was stacked in a manner in which it could be easily handled for opening and further distribution.

"I was going to go through the mail, sort it, open it, and distribute it but since I was all alone, I was too occupied with other duties and did not have time to go through it until after the bid opening (IFB DAKF27-78-B-0011) for which I served as recorder.

"A few minutes before 1400 hours I picked up the large envelope which contained bids for DAKF27-78-B-0011 and proceeded to the bid opening room where the bid was opened.

"After the bid opening, I returned to my office and soon began to sort and distribute the mail. I saw an envelope which I immediately recognized as a bid, and looking at it closely I saw it was a bid for the same solicitation which had been opened at 1400 hours. I immediately brought this to the attention of [the procurement officer]."

Pearce's bid was discovered at 2:30 p.m. The procurement officer concluded that had routine procedures been followed, Pearce's bid would have been sorted with the 1:15 mail, placed in an envelope reserved for the solicitation, and brought to the bid opening room with the other bids in time for the bid opening. This view that any delay in receipt or recognition of Pearce's bid is the result of Government mishandling after receipt at the installation is supported by legal counsel to the procuring activity.

The Army, however, recommends that Merton's protest be sustained and Pearce's bid not be considered due to untimeliness. While recognizing that there is evidence that Pearce's bid may have arrived with the 1:15 p.m. incoming mail at the designated receiving office before bid opening, the Army has determined that Pearce's bid must be considered late due to its interpretation of Instrumentation and Mechanical Systems, Inc., supra.

A late bid is one received in the office designated in the invitation for bids after the exact time set for opening. Armed Services Procurement Regulation (ASPR) § 2-303.1 (1976 ed.). ASPR § 7-2002.2(a) (1976 ed.) governs the consideration of late bids and was incorporated into Clause 7 of the "Instructions to Bidders" of the IFB. Under that provision, a late bid may not be considered for award unless it is established that the lateness was due solely to either a delay in the mails or to mishandling by the Government.

The regulation limits the evidence to be considered to certified or registered mail in establishing delay in the mails and documentary evidence such as a time/date stamp in showing timely receipt at the installation and subsequent mishandling by the Government.

None of these preconditions is met here. Pearce's bid was not mailed by registered or certified mail. There is no time/date stamp or other documentary evidence indicating the arrival time of the bid at the installation or the designated receiving room.

Consequently, Pearce's bid may not be considered under the late bid regulations.

It is also argued that Pearce's bid was not late but arrived at the bid receiving office before the deadline. Evidence in the form of usual procedure for the delivery of mail to the designated office along with statements of office employees are submitted to show that the bid was timely received and its late discovery was due to inadvertence by the Government.


Investigation has failed to show conclusively how and when Pearce's bid was placed with the unsorted 1:15 p.m. mail resulting in its discovery thirty minutes after the deadline for receiving bids. While we have some circumstantial evidence, there is no direct or documentary evidence showing conclusively that the bid was received at the installation or bid receiving room before 2:00 p.m. The lateness could have been caused by a delay in the mails, delay at the installation or by Pearce. The most that can be said in behalf of considering Pearce's bid is that the bid may have been delivered to the bid receiving room before the deadline. See B-152913, February 6, 1964; Free State Builders, Inc., B-184155, February 26, 1976, 76-1 CPD 133.

The fact remains that Pearce's bid was not discovered until after the time set for bid opening. Other than Pearce's statement that the bid was mailed in time

to be timely received and statements by Procurement Control Branch employees concerning usual mail and office procedure, there is no independent evidence to establish conclusively that Pearce's bid was not late. In order to preserve the integrity of the competitive process, we must conclude that the bid may not be considered for the award. See S. Puma and Company, B-182936, April 17, 1975, 75-1 CPD 230.

Accordingly, the protest is sustained.

We recognize that the result in this case is harsh, particularly because of the Government's failure to review the incoming mail prior to bid opening. We recommend that the agency take corrective action to prevent a recurrence. Moreover, in B-152913, supra, the agency, in similar circumstances, chose to cancel the solicitation and resolicit its requirements. Here, however, we do not know whether it is feasible to do so at this time. We, therefore, suggest that the agency consider whether its needs permit a similar course of action.


Deputy Comptroller General
of the United States